IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

FRIDAY, THE 19TH OCTOBER 2007 / 27TH ASWINA 1929

WP(C).No. 30479 of 2007(C)

PETITIONER:

M/S.N.MAHALINGAM & CO.,
68, DR.NANJAPPA ROAD, COIMBATORE-641 018,
REP. BY ITS MANAGING PARTNER,
A.SHANMUGHASUNDARAM.

BY ADV. SRI.N.MURALEEDHARAN NAIR
SRI.V.K.SHAMUSUDHEEN

RESPONDENTS:
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1. THE STATE OF KERALA,
REPRESENTED BY ITS FINANCE,
SECRETARY, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM, KERALA.

2. COMMISSIONER OF COMMERCIAL TAXES,
PUBLIC OFFICE BUILDING, THIRUVANANTHAPURAM.

3. THE DEPUTY COMMISSIONER OF COMMERCIAL
TAXES, THIRUVANANTHAPURAM.

4. THE ASSISTANT COMMISSIONER
(ASSESSMENT), SPECIAL CIRCLE, THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI.K.P.PRADEEP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 16/10/2007, THE COURT ON 19/10/2007 DELIVERED THE FOLLOWING:

ANTONY DOMINIC, J.

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W.P.(C) No. 30479 OF 2007 C
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Dated this the 19th October, 2007

J U D G M E N T

Ext. P1 is an order of revised assessment fastening liability of tax at the rate of 15% under the K.G.S.T. Act. Against the said order of the 3rd respondent, exercising suo motu powers of revision, the petitioner had filed appeals to the Tribunal which were dismissed by Exts. P2 and P3 orders. As against these orders, petitioner filed Sales Tax Revision No. 215 of 2003 before this Court and on the dismissal of which, the judgment was challenged before the Apex Court in S.L.P.(C) No. 9825 of 2007 and connected cases. The Special Leave Petitions were also dismissed by Ext. P4. Thus Ext. P1 order of revised assessment has become final between the parties and the liability of the petitioner to pay tax at the rate of 15% stands affirmed.

2. Now this writ petition has been filed by the petitioner praying for directing the 4th respondent not to demand and collect the differential tax of 5% and above 10% already remitted by the petitioner on their sale of diesel engines in respect of which Ext. P1

revised order of assessment was passed. The 2nd prayer is to issue a writ of certiorari or any other appropriate writ or order to quash Ext.P1 order for the reason that the same has been issued contrary to Ext. P5 circular of the Board of Revenue. According to the petitioner, Ext.P5 is a circular issued by the Board of Revenue which is binding on the 3rd respondent and in terms of Ext.P5, the liability of the petitioner is only to pay 10% tax. In other words, what the petitioner now contends is Ext. P1 order of revised assessment which has been affirmed by the appellate authority, this Court and the Apex Court, is against Ext. P5 circular and that if the benefit of the said circular is extended, as against its present liability to pay tax at the rate of 15%, the petitioner's liability will be only 10%

3. During the course of the submissions, relying on the judgments reported in ***Collector of Central Excise, Patna v. Usha Martin Industries*** {**111 STC 254**}, ***Commissioner of Sales Tax v. Indra Industries*** {**248 ITR 338**} ***and Collector of Central Excise, Vadodra v. Dhiren Chemical Industries*** {**126 STC 122**}, it was contended by the learned counsel for the writ petitioner that the 3rd

respondent who was bound by the circular, could not have ignored the same and passed Ext. P1. Therefore, the learned counsel submitted that this Court should intervene and quash Ext. P1 restraining the respondents from collecting tax in terms of Ext. P1.

4. In my view, it is not open to the petitioner to take such a contention in this proceedings. The parties are bound by Ext. P1 order of the 3rd respondent, the order of the Appellate Tribunal, the judgment of this Court in S.T.R. No. 215/03 and connected cases, which has been affirmed by the Apex Court in Ext. P4, dismissing the Special Leave Petition filed. If according to the petitioner, Ext.P2 was relevant and had it been produced the judgment would have been different, the course open to the petitioner is not to file a writ petition as they have now done, but to seek a review of the judgments. Therefore, in my view this writ petition is liable to be dismissed as not maintainable and I do so.

ANTONY DOMINIC,
JUDGE

jan/-